

## STATE OF NORTH CAROLINA

File No.

Wake

County

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name And Address Of Plaintiff 1

Chip Futrell  
407 Broad Street, W.  
Wilson, NC 27893

2020 JUL 13 A 10:30

WAKE COUNTY S.C.  
BYGENERAL  
CIVIL ACTION COVER SHEET☒ INITIAL FILING ☐ SUBSEQUENT FILING

Rule 5(b) of the General Rules of Practice for the Superior and District Courts

## VERSUS

Name And Address Of Defendant 1

North Carolina State University  
Allison Newhart, Vice Chancellor and General Counsel  
Campus Box 7008  
Raleigh, NC 27685-7008

Name And Address Of Attorney Or Party, If Not Represented  
(complete for initial appearance or change of address)

Charles E. Monteith, Jr.  
Monteith Law, PLLC  
9121 Anson Way, Suite 200  
Raleigh, NC 27615

Summons Submitted

☒ Yes ☐ No

Telephone No.

919 987-1052

Cellular Telephone No.

919 624-4196

NC Attorney Bar No.

9368

Attorney Email Address

charles@monteithlawnc.com

Name And Address Of Defendant 2

☒ Initial Appearance in Case ☐ Change of Address

Name Of Firm

Monteith Law, PLLC

Fax No.

984 777-5435

Summons Submitted

☐ Yes ☐ No

Counsel For

☒ All Plaintiffs ☐ All Defendants ☐ Only: (list party(ies) represented)☒ Jury Demanded In Pleading ☐ Complex Litigation ☐ Stipulate to Arbitration

## TYPE OF PLEADING

(check all that apply)

- ☐ Amend (AMND)  
☐ Amended Answer/Reply (AMND-Response)  
☐ Amended Complaint (AMND)  
☐ Assess Costs (COST)  
☐ Answer/Reply (ANSW-Response) (see Note)  
☐ Change Venue (CHVN)  
☒ Complaint (COMP)  
☐ Confession Of Judgment (CNFJ)  
☐ Consent Order (CONS)  
☐ Consolidate (CNLS)  
☐ Contempt (CNTPT)  
☐ Continue (CNTN)  
☐ Compel (CMPL)  
☐ Counterclaim (CTCL) Assess Court Costs  
☐ Crossclaim (list on back) (CRSS) Assess Court Costs  
☐ Dismiss (DISM) Assess Court Costs  
☐ Exempt/Waive Mediation (EXMD)  
☐ Extend Statute Of Limitations, Rule 9 (ESOL)  
☐ Extend Time For Complaint (EXCO)  
☐ Failure To Join Necessary Party (FJNP)

- ☐ Failure To State A Claim (FASC)  
☐ Implementation Of Wage Withholding In Non-IV-D Cases (OTHR)  
☐ Improper Venue/Division (IMVN)  
☐ Including Attorney's Fees (ATTY)  
☐ Intervene (INTR)  
☐ Interplead (OTHR)  
☐ Lack Of Jurisdiction (Person) (LJPN)  
☐ Lack Of Jurisdiction (Subject Matter) (LJSM)  
☐ Modification Of Child Support In IV-D Actions (MSUP)  
☐ Notice Of Dismissal With Or Without Prejudice (VOLD)  
☐ Petition To Sue As Indigent (OTHR)  
☐ Rule 12 Motion In Lieu Of Answer (MDLA)  
☐ Sanctions (SANC)  
☐ Set Aside (OTHR)  
☐ Show Cause (SHOW)  
☐ Transfer (TRFR)  
☐ Third Party Complaint (list Third Party Defendants on back) (TPCL)  
☐ Vacate/Modify Judgment (VCMD)  
☐ Withdraw As Counsel (WDCN)  
☐ Other (specify and list each separately)

NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must include either a General Civil (AOC-CV-751), Motion (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.

(Over)

# CLAIMS FOR RELIEF

- |                                                            |                                                                     |                                                                              |
|------------------------------------------------------------|---------------------------------------------------------------------|------------------------------------------------------------------------------|
| <input type="checkbox"/> Administrative Appeal (ADMA)      | <input type="checkbox"/> Limited Driving Privilege - Out-Of-State   | <input type="checkbox"/> Product Liability (PROD)                            |
| <input type="checkbox"/> Appointment Of Receiver (APRC)    | <input type="checkbox"/> Convictions (PLDP)                         | <input type="checkbox"/> Real Property (RLPR)                                |
| <input type="checkbox"/> Attachment/Garnishment (ATTC)     | <input type="checkbox"/> Medical Malpractice (MDML)                 | <input type="checkbox"/> Specific Performance (SPPR)                         |
| <input type="checkbox"/> Claim And Delivery (CLMD)         | <input type="checkbox"/> Minor Settlement (MSTL)                    | <input checked="" type="checkbox"/> Other (specify and list each separately) |
| <input type="checkbox"/> Collection On Account (ACCT)      | <input type="checkbox"/> Money Owed (MNYO)                          | Violation of Title VII of Civil Rights Act                                   |
| <input type="checkbox"/> Condemnation (CNDM)               | <input type="checkbox"/> Negligence - Motor Vehicle (MVNG)          |                                                                              |
| <input type="checkbox"/> Contract (CNTR)                   | <input type="checkbox"/> Negligence - Other (NEGO)                  |                                                                              |
| <input type="checkbox"/> Discovery Scheduling Order (DSCH) | <input type="checkbox"/> Motor Vehicle Lien G.S. Chapter 44A (MVLN) |                                                                              |
| <input type="checkbox"/> Injunction (INJU)                 | <input type="checkbox"/> Possession Of Personal Property (POPP)     |                                                                              |

Date

07/12/2020

Signature Of Attorney/Party

*CCM*

## FEES IN G.S. 7A-308 APPLY

Assert Right Of Access (ARAS)  
Substitution Of Trustee (Judicial Foreclosure) (RSOT)  
Supplemental Procedures (SUPR)

## PRO HAC VICE FEES APPLY

Motion For Out-Of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter (Out-Of-State Attorney/Pro Hac Vice Fee)

No.	<input type="checkbox"/> Additional Plaintiff(s)	
No.	<input type="checkbox"/> Additional Defendant(s) <input type="checkbox"/> Third Party Defendant(s)	Summons Submitted
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No

Plaintiff(s) Against Whom Counterclaim Asserted

Defendant(s) Against Whom Crossclaim Asserted



## STATE OF NORTH CAROLINA

File No.

Wake County

In The General Court Of Justice  
☐ District ☒ Superior Court Division

Name Of Plaintiff

Chip Futrell

Address

407 Broad Street W.

City, State, Zip

Wilson, NC 27893

VERSUS

Name Of Defendant(s)

North Carolina State University

CIVIL SUMMONS  
☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

## To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

North Carolina State University

Allison Newhart, Vice Chancellor and General Counsel

Campus Box 7008

Raleigh, NC 27685-7008

Name And Address Of Defendant 2



**IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!**

**¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!**

**Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!**

## A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

Charles E. Monteith, Jr.

Monteith Law, PLLC

9121 Anson Way, Suite 200

Raleigh, NC 27615

Date Issued

Signature

Time

☒ AM ☐ PM☐ Deputy CSC☒ Assistant CSC☐ Clerk Of Superior Court☐ ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM ☐ PM

Signature

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court

**NOTE TO PARTIES:** Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

AOC-CV-100, Rev. 4/18

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**RETURN OF SERVICE**

I certify that this Summons and a copy of the complaint were received and served as follows:

**DEFENDANT 1**

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	------------------------------------------------------------------------	-------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- ☐ Other manner of service (specify)

- ☐ Defendant WAS NOT served for the following reason:

**DEFENDANT 2**

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	------------------------------------------------------------------------	-------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- ☐ Other manner of service (specify)

- ☐ Defendant WAS NOT served for the following reason:


Service Fee Paid \$	Signature Of Deputy Sheriff Making Return
Date Received	Name Of Sheriff (type or print)
Date Of Return	County Of Sheriff



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
CVS \_\_\_\_\_

2020 JUL 13 A 10:30

WAKE CO., C.S.C.  
BY 

CHIP FUTRELL,

Plaintiff,

v.

NORTH CAROLINA STATE  
UNIVERSITY, a Constituent Institution of  
University of North Carolina,

Defendant.

VERIFIED COMPLAINT  
(JURY TRIAL DEMANDED)

## I. PARTIES

1) Plaintiff Chip Futrell (hereinafter "Plaintiff") is, and at all times relevant to this action was, a citizen and resident of Wilson County, North Carolina.

2) Defendant North Carolina State University (hereinafter "Defendant") is a constituent institution of the University of North Carolina that is organized and exists pursuant to North Carolina General Statute (hereinafter "N.C.G.S.") § 116-1, *et seq.*

## II. JURISDICTION AND VENUE

3) This court has subject matter jurisdiction over this action pursuant to N.C.G.S. §§ 7A-240, 7A-243 and 42 U.S.C. § 2000e-5(f)(3).

4) This court has personal jurisdiction over the Defendant in this matter pursuant to N.C.G.S. § 1-75.4.

5) The actions complained of by Plaintiff occurred within Wake County, North Carolina, where Defendant is located.

- 6) Venue is properly laid in this Court pursuant to N.C.G.S. § 1-82.

### III. FACTS

- 7) Plaintiff is a fifty-one-year-old gay male.
- 8) Plaintiff began his employment with Defendant in 1993 as an intern while pursuing a master's degree. He returned to work for Defendant in August 1997 as a program assistant.
- 9) Plaintiff held a number of different positions with Defendant's Office of Professional Development from July 1999 until June 2006. He was then promoted to an Associate Director for Continuing and Professional Education in July 2006.
10. Plaintiff was promoted to the Director for Continuing and Professional Education in April 2013.
- 11) On October 1, 2018, Plaintiff was named the Interim Vice Provost of Continuing Education following the retirement of the then Vice Provost of Continuing Education.
- 12) As the Interim Vice Provost of Continuing Education, Plaintiff was responsible for leadership of the McKimmon Center for Extension and Continuing Education. In such capacity, Plaintiff reported directly to Thomas K. Miller, III, the Senior Vice Provost.
- 13) Defendant advertised the Vice Provost of Continuing Education position in January 2019. Plaintiff applied for the position on or about February 25, 2019.
- 14) Nine individuals were selected to serve on the search committee for the Vice Provost of Continuing Education position.
- 15) On March 28, 2019, Plaintiff was notified that he had been selected for a first-round video conference interview.

16) Plaintiff interviewed for the position on April 11, 2019. On the following day, Leslie Boney, the search committee chairperson, told Plaintiff that he had “killed it” during his interview. Plaintiff reasonably interpreted Boney’s comments to mean that he had done very well during his interview.

17) On April 24, 2019, Defendant announced that three finalists had been selected for the Vice Provost of Continuing Education position. Plaintiff was not chosen as one of the three finalists. All three of the finalists were married heterosexual males who had children.

18) On April 25, 2019, Plaintiff requested a copy of the interview notes that the committee members had made following his interview. Defendant provided Plaintiff with a copy of the requested interview notes on May 15, 2019. The notes made by one unidentified interview committee member referred to Plaintiff as a “plugger.”

19) “Plugger” is a word often used to refer to a gay man who has anal sex with another man.

20) On May 22, 2019, Plaintiff learned that Mark Bernhard, a heterosexual male, had accepted the Vice Provost for Continuing Education. Bernhard began employment with Defendant on or about June 26, 2019. Plaintiff returned to his former position as the Director for Continuing and Professional Education at that same time.

21) Since Bernhard began working in the Vice Provost of Continuing Education position, he has relied on Petitioner’s experience and expertise in performing the duties of Bernhard’s position.

22) During the time that Plaintiff was the Interim Provost of Continuing Education, Plaintiff performed the duties of the Vice Provost of Continuing Education position in a more than satisfactory manner.



23) Plaintiff was more qualified for the Vice Provost of Continuing Education position than any of the three finalists, including Bernhard.

#### **IV. JURISDICTIONAL ALLEGATIONS**

24) On May 16, 2019, Plaintiff filed a formal complaint of discrimination with Defendant's Office of Institutional Equity and Diversity (OIED). In said complaint, Plaintiff asserted that he had not been promoted to the Vice Provost of Continuing Education position because of his sexual orientation.

25) The OIED issued an investigative summary on August 7, 2019. Said summary found that no policy violation had occurred. Said summary, however, failed to identify the committee member who referred to Plaintiff as a plugger.

26) On September 20, 2019, Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC). In such charge, Plaintiff asserted that Defendant failed to promote Plaintiff to the Vice Provost of Continuing Education position because of his sexual orientation.

27) On January 16, 2019, the EEOC issued Plaintiff a right to sue letter.

28) Plaintiff has exhausted all applicable administrative remedies.

29) On April 8, 2019, Plaintiff and Defendant executed a Stipulation to Toll Limitations Period for Charging Party's Title VII Claim.

#### **V. CLAIM FOR RELIEF**

##### **Violation of 42 U.S.C § 2000e-2**



30) Plaintiff incorporates herein the allegations of paragraphs 1-29 of this complaint as if fully set forth herein.

31) Defendant was more qualified for the Vice Provost of Continuing Education position than Mark Bernhard – the individual who was selected for said position.

32) Defendant failed to promote Plaintiff to the Vice Provost of Continuing Education position because of Plaintiff's sexual orientation.

33) Upon information and belief, Defendant has a history of failing to promote gay males to higher level positions.

34) Defendant's actions as described herein were malicious and in willful and wanton disregard of Plaintiff's rights.

35) As a result of Defendant's actions, Plaintiff has suffered lost wages, decreased employment benefits, pain and suffering, mental and emotional distress, and other economic losses.

36) Plaintiff has suffered damages in an amount in excess of \$25,000.00 as a result of Defendant's actions.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays the Court:

1) For judgment against Defendant for compensatory damages in a sum in excess of Twenty-Five Thousand Dollars (\$25,000.00);

2) For a judgment declaring the employment practices of Defendant's alleged herein to be unlawful;

3) For an order requiring Defendant to make whole the Plaintiff by promoting him to the position of employment he would have enjoyed had Defendant not engaged in unlawful practices, by providing Plaintiff appropriate back pay, front pay, and reimbursement for lost benefits in an amount to be shown at trial, and by granting Plaintiff other appropriate affirmative relief;

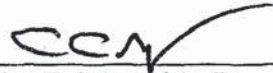
4) For recovery of Plaintiff's costs herein, including a reasonable attorney's fee and prejudgment interest from the date of the filing of this complaint; and

5) For such other relief to which Plaintiff may be entitled in law or in equity.

6) Trial by jury is hereby demanded as to all issues so triable.

This the 13<sup>th</sup> day of July 2020,

BY: \_\_\_\_\_

  
Charles E. Monteith, Jr.  
Attorney for Plaintiff  
NC State Bar No. 9368  
Monteith Law, PLLC  
9121 Anson Way, Suite 200  
Raleigh, North Carolina 27615  
Telephone No. (919) 987-1052  
Facsimile No. (984) 777-5435



STATE OF NORTH CAROLINA  
COUNTY OF WILSON

VERIFICATION

Chip Futrell, first being duly sworn, deposes and says:

That he is the Plaintiff in the foregoing action; that he has read the foregoing Verified Complaint and knows the contents thereof; and that the same is true of his knowledge, except as to those matters and things therein stated upon information and belief, and that to those matters he believes them to be true.

This tenth day of July 2020,

  
Chip Futrell

Sworn and subscribed  
before me this the  
10<sup>th</sup> day of July 2020,

  
Notary Public

My Commission expires: July 9, 2021

